

1 Graham B. LippSmith (SBN 221984)

g@lippsmith.com

2 MaryBeth LippSmith (SBN 223573)

mb@lippsmith.com

3 Jaclyn L. Anderson (SBN 258609)

jla@lippsmith.com

LIPPSMITH LLP

4 555 S. Flower Street, Suite 4400

Los Angeles, California 90071

Tel: (213) 344-1820 / Fax: (213) 513-2495

5 Jeremy M. Glapion

6 *Admitted Pro Hac Vice*

jmg@glapionlaw.com

GLAPION LAW FIRM

7 1704 Maxwell Drive

Wall, New Jersey 07719

8 Tel: (732) 455-9737 / Fax: (732) 965-8006

9 Jason T. Dennett (WSBA #30686)

Admitted Pro Hac Vice

jdennett@tousley.com

10 Kaleigh N. Boyd (WSBA #52684)

Admitted Pro Hac Vice

kboyd@tousley.com

TOUSLEY BRAIN STEPHENS PLLC

11 1200 Fifth Avenue, Suite 1700

Seattle, Washington 98101-3147

Tel: (206) 682-5600 / Fax: (206) 682-2992

13 Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

14 MICHAEL MCGINNIS and
15 CYNDY BOULTON, individually,
16 and on behalf of all others similarly
17 situated;

18 Plaintiffs,

v.

19 COMMUNITY.COM, INC.;

20 Defendant.

21 Civil Case No.: 2:23-cv-2426

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- (1) **VIOLATIONS OF CIPA, CAL.
PENAL CODE § 631;**
- (2) **VIOLATIONS OF CIPA, CAL.
PENAL CODE § 632;**
- (3) **VIOLATIONS OF CIPA, CAL.
PENAL CODE § 632.7; and**
- (4) **VIOLATIONS OF ECPA, 18 U.S.C. §
2511**

INTRODUCTION

1. This action arises out Defendant Community.com, Inc.’s (“Defendant”) practice of intercepting, holding hostage, and accessing text messages intended for third parties, without the consent of all parties to those text messages.

2. In so doing, Defendant violates the California Invasion of Privacy Act (“CIPA”), Cal. Penal Code §§ 630, *et seq.*, and the Electronic Communications Privacy Act (“ECPA”), 18 U.S.C. § 2510, *et seq.*.

3. Accordingly, Plaintiffs bring this action on behalf of separate classes of similarly situated individuals under CIPA and ECPA.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under ECPA, which is a federal statute. The Court has supplemental jurisdiction over Plaintiffs' CIPA claim pursuant to 28 U.S.C. § 1337.

14 5. This Court also has subject matter jurisdiction over this action under 28
15 U.S.C. § 1332(d)(2) because this is a class action wherein the amount in controversy
16 exceeds the sum or value of \$5 million, exclusive of interest and costs, there are more
17 than 100 members in the proposed class, and at least one member of the class is a
18 citizen of a state different from Defendant. On information and belief, more than two-
19 thirds of the Class are citizens of states other than California. .

20 6. This Court has jurisdiction over Defendant because Defendant conducts
21 business transactions in this District, has committed tortious acts in and from this

1 | District, is headquartered in this district, and has offices located in this District.

2 7. Venue is proper in this District because Defendant conducts significant
3 amounts of business transactions within this District; is headquartered in this District;
4 has offices located in this District; and because some of the wrongful conduct giving
5 rise to this case occurred in, was directed to, and/or emanated from this District.

PARTIES

7 8. Plaintiff Michael McGinnis is, and at all times mentioned herein was, a
8 citizen and resident of Winnetka, California.

9 9. Plaintiff Cyndi Boulton is, and at all times mentioned herein was, a
10 citizen and resident of Anaheim, California.

11 10. Plaintiff McGinnis is, and at all times mentioned herein was, a "person"
12 as defined by California Penal Code § 7.

13 11. Plaintiff Boulton is, and at all times mentioned herein was, a "person" as
14 defined by California Penal Code § 7.

15 12. Defendant is, and at all times mentioned herein was, a Delaware
16 corporation headquartered at 1547 9th Street, Santa Monica, CA 90401.

17 13. Defendant is, and at all times mentioned herein was, a "person" as
18 defined by California Penal Code § 7

19 14. Defendant is, and all times mentioned herein was, a “person” as defined
20 by California Penal Code § 632(h)

21 ||| 15 Defendant is, and at all times mentioned herein was, a "person" pursuant

1 to 18 U.S.C. § 2510(6).

2 **COMMUNITY.COM'S PLATFORM**

3 16. Defendant provides telephone numbers to “celebrities” ranging from
4 influencers to television stars to professional athletes.

5 17. These celebrities then, in conjunction with Defendant, hold these
6 telephone numbers out as their *direct* phone numbers—in other words, if a person
7 texts the number, they are directly reaching that celebrity.

8 18. This is not true. Instead, when one texts a celebrity at one of Defendant’s
9 provided numbers, they are sent a link to Defendant’s social media platform
10 (Community.com) and required to sign up for that platform before they can have any
11 possible communication with that celebrity.

12 19. Specifically, when one sends a text to a celebrity’s Community number,
13 they receive two immediate automated texts back.

14 20. The first message contains a link to Defendant’s Community.com service
15 which, when clicked, requires the texting party to sign up with Community to proceed
16 further.

17 21. Second, the texting party receives a text message ostensibly from the
18 celebrity encouraging the texting party to click the link.

19 22. The more people who sign up to communicate with a given celebrity, the
20 more Defendant charges that celebrity.

21 23. This bait-and-switch is Defendant’s business model.

1 24. Indeed, Community.com appears to have employed this same ruse
2 through other prominent personalities' social media accounts, specifically including,
3 but not limited to: Rita Wilson, LL Cool J, Jennifer Lopez, Karlie Kloss, Ashley
4 Graham, The Jonas Brothers, Kerry Washington, Arianna Huffington, Mark Cuban,
5 Tony Hawk, Ryan Seacrest, Deepak Chopra, and Sophia Bush.

6 25. As described in a fraud complaint against it, Case No. 20-cv-07552 (C.D.
7 Cal.):

8 Community is a technology start-up that utilizes an app that permits its clients—
9 including actors, musicians, athletes, and social media influencers—to
10 communicate directly with their fans or followers through SMS text messaging.
11 Its stated purpose is to allow more meaningful dialogue between the celebrities
12 and their “community” in a world dominated by a flurry of social media apps that
can make fans feel invisible or disengaged. Community’s clients include, but are
not limited to, Ashton Kutcher, Jennifer Lopez, John Legend, Paul McCartney,
Amy Schumer, Marshmello, Kerry Washington, Sean “Diddy” Combs, Mark
Cuban, Sophie Bush, and Ellen DeGeneres.

13 26. The same process—text, receive back a link to sign up for Defendant’s
14 service, and an immediate follow up “from” the celebrity—occurs with every celebrity
15 investigated.

16 27. The included links lead to a sign-up page that states, “Add your contact,”
17 and asks for First Name, Last Name, Gender Identity, Birthday, City, and Email
18 (Optional).

19 28. Below these input fields is small text requiring agreement to
20 Community’s Terms of Use and Privacy Policy, and below that is an “Accept” button.
21

1 **COMMUNITY.COM'S INTERCEPTION, RECORDING, AND ACCESS**

2 29. As of April 5, 2021, Defendant's privacy policy stated the following:

3 If you start a conversation with a Community Leader by sending a text message
4 to their Community Number, we collect your phone number along with the
contents of the text message, so we won't need to ask you for it.

5 ...

6 When you send or reply to messages via Community, we collect your messages,
7 along with message-related information (such as the phone number from which
the message was sent, when the message was sent, and whether the message
includes a particular word, phrase, or emoji).

8 30. As of February 24, 2023, the privacy policy (which states that it was last

9 updated on November 24, 2021) provides similarly:

10 When you interact with Community Numbers (including by sending text
messages to or calling a Community Number), we collect your messages,
including message-related information (such as the phone number from
which the message was sent, when the message was sent, the content of
the message, any attached files or media . . .).

13 31. It refers to all of this as "Messaging Info."

14 32. Importantly, Defendant's privacy policy also currently states that it "may
analyze your . . . Messaging Info" and generate insights about "you," and that it may
"analyz[e] Messaging Info" to operate its platform.

17 33. Its terms go even further, stating that Defendant "may access, review,
block (including limiting Community Leaders' ability to access messages), or delete
your messages at any time and for any reason[.]" (Defendant refers to its celebrity
clients as "Community Leaders.")

21 34. While the inclusion of such disclosures would ostensibly protect

1 Defendant's interception, recording, and scanning of text messages sent *after* a person
2 signs up for Defendant's service and agrees to its terms and privacy policy, these
3 policies are not disclosed to consumers (like Plaintiffs) prior to their initial text to one
4 of Defendant's Community Leaders.

5 35. In other words, Defendant intercepts and records, without consent, the
6 initial messages intended for its celebrity clients and essentially holds them hostage
7 from the celebrity clients until the sender signs up for Defendant's social networking
8 service.

9 36. Defendant's current Privacy Policy concedes as much, explaining that
10 "[i]f you don't fully complete your registration . . . then some or all of your Messaging
11 Info may not be delivered to [Community Leaders]."

12 37. Its terms state similarly that "Community Leaders may not see your
13 messages . . . until you fully complete the registration process" and that "Community
14 may filter messages from reaching a Community Leader for various reasons[.]"

15 38. What this means is that when a consumer first sends a text to a celebrity,
16 at a number held out by that celebrity as their direct number, Defendant *prevents* that
17 message from reaching that celebrity, records and scans its contents, and only allows
18 it to continue its journey to the celebrity if the consumer signs up for Defendant's site
19 *and* Defendant deems the message content acceptable to pass its subjective and
20 unclear filters.

PLAINTIFF MCGINNIS'S FACTS

39. On March 23, 2020, Rita Wilson tweeted:

Going stir crazy? Have a suggestion for my Quarantunes playlist? TEXT ME! (310) 299-9260 - I'm giving you my phone number!! It's actually me. Text me so I can let you know what I'm up to, when I'm in your city (once we can leave our houses), and so we can stay in touch.

40. Ms. Wilson's tweet was accompanied by a video in which she stated: "I
am going to give you my phone number and you can text me and I'm going to text
you back . . . feel free to text me to my cell phone number, it is me, I will get it to [sic]
and I will get back to you . . . "

41. That week, Plaintiff McGinnis sent a text message to Rita Wilson's supposed phone number from his telephone number, ending in 8017. This was the first time Plaintiff McGinnis sent a text to that number.

42. The number Plaintiff McGinnis texted was not Rita Wilson's direct number.

43. In response to his text “to” Rita Wilson, Plaintiff McGinnis received two automated text message responses of the kind described herein (a link to Defendant’s website and a message ostensibly from Rita Wilson inviting Plaintiff McGinnis to sign up for Defendant’s website).

44. Plaintiff did not sign up for Defendant's site.

PLAINTIFF BOULTON'S FACTS

45. On April 7, 2022, LL Cool J posted a video on TikTok in which he

1 stated, among other things, "I've come up with this crazy idea for us to stay
2 connected. I'ma give you my phone number. I know it's crazy."

3 46. On April 7, 2022, Plaintiff Boulton sent a text message to LL Cool J's
4 supposed phone number. This was the first time Plaintiff Boulton sent a text to that
5 number.

6 47. Plaintiff Boulton sent this text message from her telephone number
7 ending in 6946.

8 48. The number Plaintiff Boulton texted was not LL Cool J's phone number.

9 49. In response to her text “to” LL Cool J, Plaintiff Boulton received two
10 automated text message responses of the kind described herein (a link to Defendant’s
11 website and a message ostensibly from LL Cool J inviting Plaintiff Boulton to sign up
12 for Defendant’s website).

13 ||| 50. Plaintiff Boulton did not sign up for Defendant's site.

CIPA CLAIM

15 51. As discussed above, Plaintiffs sent text messages to telephone numbers
16 ostensibly belonging to celebrities Rita Wilson and LL Cool J.

17 52. These telephone numbers are not Rita Wilson's or LL Cool J's phone
18 numbers.

19 53. Instead, as indicated by its privacy policy, Defendant intercepted,
20 recorded, and scanned the messages intended for Rita Wilson and LL Cool J, and
21 refused to deliver the messages to these celebrities, unless and until Plaintiffs paid the

1 toll of signing up for Defendant's site.

2 54. At no point prior to sending the initial text message to either of the
3 celebrity telephone numbers were Plaintiffs informed of, nor did they consent to,
4 Defendant's collection and scanning of the text message intended for each celebrity.

5 55. The same is true across Defendant's other Community Leaders.

6 56. Community Leaders tweet the same or substantially similar tweets as
7 those described above, posting what is ostensibly their cell phone numbers so that
8 members of the public can text with them. In addition to the celebrities listed above,
9 these more than 900 Community Leaders include, but are not limited to, Kerry
10 Washington, Scott Disick, David Dobrik, James Charles, Reba McEntire, James
11 Murray, and Sean Combs.

12 57. Upon information and belief, Defendant works with its celebrity "clients"
13 to come up with scripts or general ideas on how to best discuss their telephone number
14 to the public.

15 58. As far as Plaintiffs and putative CIPA Class Members (defined below)
16 were concerned, the telephone numbers Rita Wilson, LL Cool J, and other celebrities
17 promoted were direct lines to those celebrities, not subject to interception and logging
18 by interlopers like Defendant.

19 59. The promotion of celebrities' purported phone numbers gives consumers
20 an objectively reasonable expectation of confidentiality and that an interloper is not
21 overhearing or recording the conversation.

1 60. This expectation is especially important given the language the
2 celebrities use in inviting consumers to text them at their numbers, which suggests
3 personal conversation.

4 61. In fact, the celebrities often appear to preempt doubts that the numbers
5 are actually theirs, such as when LL Cool J stated that he “knows it’s crazy” to give
6 out his number, which would only arguably be true if, in fact, it were his number. It is
7 decidedly less “crazy” to give out a social media number.

8 62. Further, Plaintiffs used their cell phones in the communications that
9 Defendant intercepted.

10 63. As it is uncommon for ordinary consumers to send text messages using
11 something other than a cell phone, it is overwhelmingly, if not exclusively, the case
12 that putative CIPA Class Members also used their cell phones in the communications
13 Defendant intercepted.

14 64. Accordingly, Defendant has violated three separate provisions of CIPA.

15 65. California Penal Code § 631(a) makes liable “[a]ny person . . . who
16 willfully and without the consent of all parties to the communication . . . reads, or
17 attempts to read, or to learn the contents or meaning of any message, report, or
18 communication while the same is in transit or passing over any wire, line, or cable, or
19 is being sent from, or received at any place within this state[.]”

20 66. Defendant did not have Plaintiffs’ consent to read or attempt to read or
21 learn the contents of their initial messages intended for Rita Wilson or LL Cool J, nor

1 did it have the consent to read or attempt to read or learn the contents of the initial
2 messages putative Class Members sent to any of Defendant's celebrity clients.

3 67. Unbeknownst to Plaintiffs and putative Class Members, the messages
4 sent to Defendant's celebrity clients are instead rerouted to and captured by Defendant
5 and never actually reach the celebrity unless the sender signs up for Defendant's site.

6 68. Accordingly, Defendant read, or attempted to read, or attempted to learn
7 the contents of the messages sent to its celebrity clients before those messages were
8 delivered to their destination (i.e., while in transit).

9 69. Defendant therefore violated California Penal Code § 631.

10 70. California Penal Code § 632(a) makes liable “[a] person who,
11 intentionally and without the consent of all parties to a confidential communication,
12 uses a[...] recording device to eavesdrop upon or record the confidential
13 communication, whether the communication is carried on among the parties in the
14 presence of one another or by means of a . . . telephone[.]”

15 71. California Penal Code § 632(c) defines “confidential communication” as
16 “any communication carried on in circumstances as may reasonably indicate that any
17 party to the communication desires it to be confined to the parties thereto.”

18 72. Prior to sending their first text message, Plaintiffs and putative Class
19 Members were led to believe they were texting directly and privately with the
20 celebrities who provided their phone numbers, making the communication a
21 “confidential communication.”

1 73. Defendant, using its software application (a recording device),
2 eavesdropped upon the confidential communications Plaintiffs and putative Class
3 Members sent to various celebrities.

4 74. Plaintiffs and putative Class Members did not consent to Defendant's
5 eavesdropping and recording of these communications.

6 75. Defendant, therefore, violated California Penal Code § 632(a).

7 76. California Penal Code § 632.7(a) makes liable “[e]very person who,
8 without the consent of all parties to the communication, intercepts or receives and
9 intentionally records, or assists in the interception or reception and recordation of, a
10 communication transmitted between two cellular radio telephones, a cellular radio
11 telephone and a landline telephone, two cordless telephones, a cordless telephone and
12 a landline telephone, or a cordless telephone and a cellular radio telephone[.]”

13 77. Plaintiffs and putative Class Members sent the text messages from their
14 cell phones to what was held out as the personal telephone number of various
15 celebrities.

16 78. Defendant instead intercepted, received, recorded, and scanned these
17 communications without Plaintiffs' and putative Class Members' consent.

18 79. Defendant, therefore, violated California Penal Code § 632.7.

19 80. Each of the aforementioned violations are enforceable privately via
20 California Penal Code § 637.2, which provides for statutory damages of \$5,000 per
21 violation.

1 81. As Defendant committed the three violations described above, Plaintiffs
2 and putative Class Members are entitled to \$15,000 for each text message sent to
3 Defendant's clients.

4 82. The policies to intercept, receive, record, and scan these messages were
5 designed and implemented in California.

6 83. Upon information and belief, the messages were intercepted, recorded,
7 and stored on servers located in California.

ECPA CLAIM

9 84. The ECPA makes liable any person who “intentionally intercepts,
10 endeavors to intercept, or procures any other person to intercept or endeavor to
11 intercept, any wire, oral, or electronic communication[.]” 18 U.S.C. § 2511(1)(a).

12 85. “Electronic communication” is defined as “any transfer of signs, signals,
13 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in
14 part by a wire, radio, electromagnetic, photoelectronic or photooptical system that
15 affects interstate or foreign commerce[.]”

16 86. Plaintiffs' and putative ECPA Class Members' text messages are
17 electronic communications as defined by the statute.

18 87. "Intercept" means "the aural or other acquisition of the contents of any
19 wire, electronic, or oral communication through the use of any electronic, mechanical,
20 or other device.

1 88. “Electronic, mechanical, or other device” means “any device or apparatus
2 which can be used to intercept a wire, oral, or electronic communication[.]”

3 89. Defendant's software application that captures Plaintiffs' and putative
4 ECPA Class Members' text messages is an electronic device.

5 90. Defendant's use of this software application to divert, capture, and record
6 Plaintiffs' and putative ECPA Class Members' text messages qualifies as an
7 "intercept."

8 91. A person who violates 18 U.S.C. § 2511(1)(a) is liable for \$10,000 in
9 statutory damages to any person whose wire, oral, or electronic communication is
10 intercepted, disclosed, or intentionally used.

11 92. For the same reasons as set forth for Plaintiffs' CIPA Claims, Defendant
12 is liable to Plaintiffs and putative ECPA Class Members for violations of ECPA.

CLASS ACTION ALLEGATIONS

14 93. Plaintiffs bring this action under Federal Rule of Civil Procedure 23 on
15 behalf of Classes defined as follows:

16 **Nationwide CIPA Class:** Since March 30, 2019, Plaintiffs and all
17 persons in the United States who sent a text message to a number
18 assigned to one of Defendant's clients and did not subsequently register
19 for Defendant's Community.com service.

20 //

21 | //

Nationwide ECPA Class: Since March 30, 2019, Plaintiffs and all persons in the United States who sent a text message to a number assigned to one of Defendant's clients and did not subsequently register for Defendant's Community.com service.

California CIPA Class: Since March 30, 2019, Plaintiffs and all persons in California who sent a text message to a number assigned to one of Defendant's clients and did not subsequently register for Defendant's Community.com service.

California ECPA Class: Since March 30, 2019, Plaintiffs and all persons in California who sent a text message to a number assigned to one of Defendant's clients and did not subsequently register for Defendant's Community.com service.

94. Excluded from the Classes are Defendant and any entities in which Defendant has a controlling interest; Defendant's agents and employees; any Judge and Magistrate Judge to whom this action is assigned and any member of their staffs and immediate families; and any claims for personal injury, wrongful death, and/or emotional distress.

1 95. The Members of the Classes for whose benefit this action is brought are
2 so numerous that joinder of all members is impracticable.

3 96. The exact number and identities of the persons who fit within the Classes
4 are ascertainable in that Defendant maintains written and electronically stored data
5 showing:

- a. The telephone numbers from which Class Members sent a text message to any of Defendant’s “Community” telephone numbers;
- b. The telephone numbers that never signed up for Defendant’s platform;
- c. The names, phone numbers, and email addresses of Class Members.

97. The Classes are comprised of thousands of individuals nationwide and
thousands of individuals in California.

12 98. There are common questions of law and fact affecting the rights of the
13 Members of the Classes, including, *inter alia*, the following:

- a. Whether Defendant intercepted, eavesdropped on, and/or recorded the contents of the text messages that Plaintiffs and putative CIPA and ECPA Class Members sent;
- b. The mechanisms used to intercept, eavesdrop on, and/or record the conversations;
- c. Whether Defendant obtained consent from all intended parties to intercept, eavesdrop on, and/or record the conversations;

- 1 d. Whether Defendant obtained express written consent prior to sending its
- 2 telemarketing text messages;
- 3 e. Whether Defendant sent its text messages using an automatic telephone
- 4 dialing system;
- 5 f. Whether Defendant's text messages were telemarketing;
- 6 g. Whether Plaintiffs and the Classes were damaged and the extent of
- 7 damages for such violations; and
- 8 h. Whether Defendant should be enjoined from engaging in such conduct in
- 9 the future.

10 99. Plaintiff McGinnis and Plaintiff Boulton are members of the CIPA and
11 ECPA Classes in that they each sent a text message to a number assigned to one of
12 Defendant's clients, each was attempting to text one of Defendant's clients for the first
13 time, and each did not subsequently register for Defendant's services.

14 100. Plaintiffs' claims are typical of the putative Class Members' claims in
15 that they arise from Defendant's uniform conduct and are based on the same legal
16 theories.

17 101. Plaintiffs have no interests antagonistic to, or in conflict with, the
18 Classes.

19 102. Plaintiffs will thoroughly and adequately protect the interests of the
20 Classes, having retained qualified and competent legal counsel to represent them and
21 the Classes.

1 103. Defendant has acted and refused to act on grounds generally applicable to
2 the Classes, thereby making injunctive and declaratory relief appropriate for the
3 Classes.

4 104. The prosecution of separate actions by individual class members would
5 create a risk of inconsistent or varying adjudications.

6 105. A class action is superior to other available methods for the fair and
7 efficient adjudication of the controversy since, *inter alia*, the damages suffered by
8 each putative Class Member make individual actions uneconomical.

9 106. Common questions will predominate, and there will be no unusual
10 manageability issues.

FIRST CAUSE OF ACTION

Violations of CIPA, California Penal Code § 631

(On Behalf of Plaintiffs and the CIPA Classes)

14 107. Plaintiffs and the proposed CIPA Classes incorporate the foregoing
15 allegations as if fully set forth herein.

16 108. Plaintiffs and CIPA Class Members each sent text messages to telephone
17 numbers intending and expecting direct communication with the person held out as
18 owning that number.

19 109. At no point prior to sending these messages did Defendant, the intended
20 recipient of the message, or anyone else disclose that the text message sent, including
21 its contents, would not actually reach the intended recipient until after Plaintiffs and

1 putative CIPA Class Members signed up for Defendant's services, or that the text
2 message would instead be diverted to, read, and recorded on Defendant's servers in
3 California.

4 110. Plaintiffs and CIPA Class Members therefore did not consent to
5 Defendant's interception and reading.

6 111. This interception and reading occurred while the messages were in transit
7 to the intended recipient.

8 112. Defendant intercepted and read these messages intentionally.

9 113. Accordingly, Defendant violated California Penal Code § 631.

10 114. Plaintiffs and CIPA Class Members are entitled to \$5,000 for each
11 wrongfully intercepted and read text message pursuant to California Penal Code
12 § 637.2.

13 **SECOND CAUSE OF ACTION**

14 **Violations of the CIPA, California Penal Code § 632**

15 **(On Behalf of Plaintiffs and the CIPA Classes)**

16 115. Plaintiffs and the proposed CIPA Classes incorporate the foregoing
17 allegations as if fully set forth herein.

18 116. Plaintiffs and CIPA Class Members each sent a text message to a
19 telephone number intending and expecting direct communication with the person held
20 out as owning that number.

21

1 117. Plaintiffs and CIPA Class Members had an objectively reasonable
2 expectation of privacy in these communications.

3 118. At no point prior to sending these messages did Defendant, the intended
4 recipient of the message, or anyone else disclose that Defendant's software application
5 would eavesdrop on the text message and its content, record the text message, and
6 store the text message on Defendant's servers in California.

7 119. Plaintiffs and CIPA Class Members therefore did not consent to
8 Defendant's eavesdropping and recording.

9 || 120. Accordingly, Defendant violated California Penal Code § 632.

10 121. Plaintiffs and CIPA Class Members are entitled to \$5,000 for each
11 wrongfully intercepted and read text message pursuant to California Penal Code
12 § 637.2.

THIRD CAUSE OF ACTION

Violations of CIPA, California Penal Code § 632.7

(On Behalf of Plaintiffs and the CIPA Classes)

16 122. Plaintiffs and the proposed CIPA Classes incorporate the foregoing
17 allegations as if fully set forth herein.

18 123. Plaintiffs and CIPA Class Members sent text messages to telephone
19 numbers intending and expecting direct communication with the person held out as
20 owning that number.

1 124. Plaintiffs and CIPA Class Members used their cellular telephones to send
2 these text messages.

3 125. At no point prior to sending these messages did Defendant, the intended
4 recipient of the message, or anyone else disclose that Defendant would intercept and
5 record these text messages, including their contents, on Defendant's servers in
6 California.

7 126. Plaintiffs and CIPA Class Members therefore did not consent to
8 Defendant's interception and recording.

9 || 127. Accordingly, Defendant violated California Penal Code § 632.7.

10 128. Plaintiffs and CIPA Class Members are entitled to \$5,000 for each
11 wrongfully intercepted and read text message pursuant to California Penal Code
12 § 637.2.

FOURTH CAUSE OF ACTION

Violations of ECPA, 18 U.S.C. § 2511(1)(a)

(On Behalf of Plaintiffs and the ECPA Classes)

16 129. Plaintiffs and the proposed ECPA Classes incorporate the foregoing
17 allegations as if fully set forth herein.

18 130. Plaintiffs and ECPA Class Members sent text messages to telephone
19 numbers intending and expecting direct communication with the person held out as
20 owning that number.

21 || 131. These text messages qualify as electronic communications.

1 132. At no point prior to sending these messages did Defendant, the intended
2 recipient of the message, or anyone else disclose that Defendant would intercept and
3 record these text messages, including their contents, on Defendant's servers in
4 California.

5 133. Plaintiffs and ECPA Class Members therefore did not consent to
6 Defendant's interception and recording.

7 134. Defendant intentionally intercepted the content of these text messages.

8 ||| 135. Defendant used an electronic device.

⁹ 136. Accordingly, Defendant violated 18 U.S.C. § 2511(1)(a).

10 137. Plaintiffs and ECPA Class Members are entitled to \$10,000 for each
11 wrongfully intercepted and read text message pursuant to 18 U.S.C. § 2520(c)(2)(B),
12 in addition to their reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

14 | **WHEREFORE**, Plaintiff McGinnis and Plaintiff Boulton, individually and on
15 | behalf of the Classes, pray for the following relief:

16 A. An order certifying the Classes as defined above, appointing Plaintiffs
17 McGinnis and Boulton as the representatives of the CIPA Classes and ECPA Classes,
18 and appointing their counsel as Class Counsel;

19 B. An order declaring that Defendant's actions, as set out above, violate
20 California Penal Code §§ 631, 632, and 632.7, and 18 U.S.C. § 2511, *et seq.*;

1 C. An award of injunctive and other equitable relief as necessary to protect
2 the interests of the Classes, including, *inter alia*, an order prohibiting Defendant from
3 engaging in the wrongful and unlawful acts described herein;

4 D. An award of statutory damages for violations of California Penal Code
5 §§ 631, 632, and 632.7, and 18 U.S.C. § 2511 *et seq.*;

6 E. An award of reasonable attorneys' fees and costs; and

7 F. Such other and further relief permitted by the aforementioned statutes or
8 that the Court deems reasonable and just.

JURY DEMAND

10 Plaintiffs request a trial by jury of all claims that can be so tried.

11 | Dated: August 18, 2023

LIPPSMITH LLP

By: /s/ Graham B. LippSmith
Graham B. LippSmith
MaryBeth LippSmith
Jaclyn L. Anderson

GLAPION LAW FIRM

Jeremy M. Glapion
Admitted Pro Hac Vice

TOUSLEY BRAIN STEPHENS PLLC

Jason T. Dennett
Admitted Pro Hac Vice
Kaleigh N. Boyd
Admitted Pro Hac Vice

Attorneys for Plaintiffs and the Class